

APPEAL NO. 020710
FILED APRIL 30, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 14, 2002. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the sixth quarter.

The appellant (self-insured) appealed, contending that during the qualifying period the claimant's underemployment was not a direct result of his impairment and that the claimant had not made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period. The claimant responds, urging affirmance.

DECISION

Affirmed as modified.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and regulatory requirements for SIBs. At issue in this case are both the direct result requirement of Section 408.142(a)(2) and Rule 130.102(b)(1) and the good faith requirement of Section 408.142(a)(4) and Rule 130.102(b)(2).

The parties stipulated that on _____, the claimant sustained a compensable left wrist injury resulting in a 17% impairment rating, and that the qualifying period for the sixth quarter was from July 21 through October 19, 2001. The claimant had fusion surgery to his left wrist which left him unable to flex his wrist, but he nonetheless returned to work with the self-insured. Some time thereafter, the claimant sustained a second injury to the left wrist because, as the claimant testified, he was unable to properly grip a heavy package or box. The claimant was subsequently laid off, ostensibly due to lack of available work. The self-insured asserts that the intervening injury and the lay off are the cause of the claimant's unemployment or underemployment rather than a direct result of the compensable injury.

Regarding the direct result argument, the self-insured cites Texas Workers' Compensation Commission Appeal No. 961317, decided August 22, 1996, as being "directly on point." In Texas Workers' Compensation Commission Appeal No. 980277, decided March 30, 1998 (Unpublished), a carrier also cited Appeal No. 961317, *supra*, for the proposition that an intervening injury precludes a finding of direct result. The Appeals Panel cited Texas Workers' Compensation Commission Appeal No. 972062, decided November 24, 1997, which stated:

Carrier cites [Appeal No. 961317, *supra*], where the Appeals Panel affirmed a hearing officer's decision that the claimant's unemployment, in that case, was due to a second injury. The Appeals Panel held that the hearing officer

was entitled to draw that inference from the evidence, emphasizing that such a determination was within the hearing officer's prerogative to decide. That case certainly does not mandate that we must reverse a hearing officer on the facts before us here.

Because the Appeals Panel affirmed another hearing officer's finding that another claimant's unemployment was due to a second injury does not require us to reverse the hearing officer in this case based on the facts before us. Other cases that the self-insured cites dealing with a claimant's unemployment being a direct result of termination or economic conditions are fact specific to that case and the hearing officer's analysis of the facts of that particular case.

In this case, the claimant testified that he looked for work during the beginning part of the qualifying period as a truck driver because that was the only work that he had ever done. The claimant succeeded in obtaining work as a truck driver at a sugar mill in September 2001, although at less than his preinjury wage. The claimant testified that he could do the truck driving for the sugar mill because it did not require the loading and unloading that the self-insured had required.

Rule 130.102(d)(1) provides that a claimant has made a good faith effort to obtain employment commensurate with the claimant's ability if the claimant has returned to work "in a position which is relatively equal to the injured employee's ability to work." The hearing officer found that during the qualifying period the claimant's employment (with the sugar mill) was relatively equal to his ability to work at that time. Whether the claimant returned to work in a position relatively equal to the injured employee's ability to work is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 011787, decided September 21, 2001. Applying the standard of review set out above, we find no basis to overturn the hearing officer's finding that the claimant in good faith sought to obtain employment commensurate with his ability to work.

A claimant need only show good faith by complying with any one of the subsections of Rule 130.102(d). Texas Workers' Compensation Commission Appeal No. 020713, decided April 17, 2002. In addition, if the claimant complies with Rule 130.102(d)(1) during any portion of the qualifying period, that will satisfy the good faith requirement of Section 408.142(a)(4) and Rule 130.102(b)(2).

As the claimant's response points out, we note that Finding of Fact No. 12, which states that the claimant did not earn wages during the qualifying period is incorrect and Finding of Fact No. 10 showing a total of \$1,279.00 earned wages is correct. Consequently, we strike Finding of Fact No. 12 as not being supported by the evidence.

The hearing officer did not err in determining that the claimant was entitled to SIBs for the sixth quarter and her factual determinations are supported by the evidence and are not against the great weight and preponderance of the evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed, as modified.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**UNITED STATES CORPORATION COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Philip F. O'Neill
Appeals Judge